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6 **UNITED STATES DISTRICT COURT**  
7 **DISTRICT OF NEVADA**  
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9 STEVE WILSON,

10 Plaintiff,

11 v.

12 ATC/VANCOM, INC., dba ATC Vancom of  
13 Nevada Ltd. Partnership,

14 Defendant.

2:06-cv-00902-BES-PAL

**ORDER**

15 Before the Court is a Motion to Dismiss With Prejudice (#19) filed by Plaintiff on  
16 February 20, 2007. Defendant did not file an opposition.

17 Plaintiff files his motion pursuant to FRCP 41(a)(1)(ii), which provides for dismissal  
18 when a stipulation signed by all parties who have appeared in the action has been filed. The  
19 motion is signed only by Plaintiff's counsel, although Plaintiff states that his counsel has  
20 obtained Defendant's consent for dismissal with prejudice.  
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22 A plaintiff may voluntarily dismiss an action without leave of court before service by the  
23 adverse party of an answer or motion for summary judgment. Fed.R.Civ. P. 41(a)(1).  
24 Otherwise, the action shall not be dismissed except "upon order of the court and upon such  
25 terms and conditions as the court deems proper." Fed.R.Civ.P. 41(a)(2). Rule 41(a)(2)  
26 motions for voluntary dismissal should be granted unless a defendant can show that it will  
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1 suffer some plain legal prejudice as a result of the dismissal. See Smith v. Lenches, 263 F.3d  
2 972, 975 (9th Cir. 2001); see also Stevedoring Serv. of Am. v. Armilla Int'l, 889 F.2d 919, 921  
3 (9th Cir. 1991).

4 Here, Defendant filed its Answer (#7) before Plaintiff filed his motion for dismissal and  
5 no stipulation for dismissal has been filed in the case. However, the motion is unopposed and  
6 the record reveals that a settlement was reached between the parties during an early neutral  
7 evaluation session conducted with Magistrate Judge George Foley, Jr. on January 29, 2007.  
8 See Doc. #18. Under these circumstances, the Court concludes that Defendant would not be  
9 legally prejudiced by the dismissal of the action pursuant to the terms described in Plaintiff's  
10 motion.  
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12 Accordingly, IT IS HEREBY ORDERED that Plaintiff's Motion to Dismiss With Prejudice  
13 (#19) is GRANTED.  
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15 DATED: This 5<sup>th</sup> day of April, 2007.  
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19 UNITED STATES DISTRICT JUDGE  
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